

SMITH VALLEY CONTROLLED GROUND WATER AREA NOTICE OF HEARING PROCEDURES

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NOTICE OF APPOINTMENT OF HEARING EXAMINER

Notice is hereby given that Charles F. Brasen has been duly appointed as the Hearing Examiner in this matter pursuant to Appointment of Hearing Examiner dated June 1, 2005. All notices, motions, briefs, testimony, and correspondence should be directed to:

Charles F Brasen
Hearing Examiner
Department of Natural
Resources and Conservation
PO Box 201601
Helena, MT 59620-1601
Phone: (406) 444-6625
Fax: (406) 444-0533

NOTICE OF OPPORTUNITY AND PROCEDURE TO PRESENT PUBLIC TESTIMONY

Any affected persons can participate in the hearing on the Smith Valley Controlled Ground Water Petition by either filing a Notice of Appearance or by presenting public testimony without filing a Notice of Appearance. Persons filing a Notice of Appearance will be accorded **Full Party** status which includes the right to appeal and persons providing public testimony without filing a Notice of Appearance will be considered **Limited Parties** without the right to appeal. Persons wishing to participate as Full Parties must postmark and send a **Notice of Appearance** (a copy of which is attached hereto) to the Hearing Examiner by **June 22, 2005**. A facsimile to Hearing Examiner Brasen received by the deadline will be accepted if the original follows by mail postmarked within 5 business days of the deadline. The form will not be accepted by the DNRC, Kalispell Water Resources Regional Office.

Questions regarding the Petition or filing a Notice of Appearance should be directed to:

Kim Overcast
Department of Natural Resources and Conservation
Water Rights Bureau
1424 Ninth Avenue
PO Box 201601
Helena, Montana 59620-1601
(406) 444-6614

All Full Parties and Petitioners will be required to participate in all prehearing conferences, either in person or through their attorneys; to assist in the preparation of the prehearing order; to participate in discovery pursuant to the orders of the Hearing Examiner; to attend the hearing and present witnesses and evidence at the hearing in support of or opposition to establishment of a controlled ground water area; and to comply with all orders of the Hearing Examiner. All Full Parties and Petitioners will be served with copies of all orders and other documents filed in this matter and shall be considered in the proceedings as parties of record in all respects. Any party may be represented by an attorney, but an attorney is not necessarily required. However, all persons appearing before the Hearing Examiner on behalf of another person or entity such as a corporation must be admitted to practice law before the courts of this state. Individuals may represent themselves, but may not speak on behalf of or represent anyone else.

Unless otherwise stipulated by all Full Parties to the proceeding, the common law and statutory rules of evidence shall not apply, except that the Hearing Examiner may exclude irrelevant, immaterial, and redundant testimony and exhibits.

PROCEDURE TO PROVIDE PUBLIC TESTIMONY – LIMITED PARTY

Any affected person may participate in the hearing process by offering public testimony. To offer public testimony during the hearing, a person does not need to file a Notice of Appearance or any other documents in advance of testifying. Persons only offering only public testimony will be considered Limited Parties. All testimony shall be given under oath or affirmation and is subject to cross-examination. Limited Parties shall not be subject to service of pleadings or other papers, nor to any obligations of Full Parties or Petitioners. A Limited Party may not call other witnesses, examine or cross-

examine any other witness, or appeal the Department's decision. The Hearing Examiner may limit the time for public testimony. Any person admitted as a Limited Party may be represented by an attorney, but an attorney is not required.

A Limited Party may submit written testimony. In order to be included in the record, written testimony must be accompanied by the following notarized statement: "I AFFIRM THE STATEMENTS APPEARING IN THIS WRITTEN TESTIMONY OR EVIDENCE ARE TRUE AND CORRECT, AND ANY DOCUMENT COPIES USED IN OR ATTACHED TO THE WRITTEN STATEMENT ARE TRUE AND CORRECT COPIES." A notary will be available at the hearing. A Limited Party submitting written testimony must be available for questioning at the hearing.

NOTICE OF HEARING AND SCHEDULING CONFERENCE

A hearing before the Montana Department of Natural Resources and Conservation to consider the establishment of a controlled ground water area will be held at the West Coast Kalispell Center Hotel, Ballroom A, 20 North Main, Kalispell MT 59901, 406-751-5050, on October 25, 2005. This hearing will be held pursuant to Mont. Code Ann. §§85-2-506 and -507 (2003). The hearing will be held in two parts to best accommodate public participation. The hearing for Full Parties shall commence at 8:30 a.m., and the hearing for Limited Parties shall commence at 5:30 p.m. Any person may attend and observe either hearing. If a Full Party admitted to appear in this proceeding does not appear at the hearing for Full Parties in this matter, he/she will be judged in default and dismissed from the case. Further details of the hearing and schedule will be discussed at the Scheduling Conference.

The Hearing Examiner will hold an in-person **Scheduling Conference** on **June 30, 2005, at 9:00** a.m. MDT, at the West Coast Kalispell Center Hotel, Ballroom A, 20 North Main, Kalispell MT 59901, 406-751-5050, Kalispell, Montana, to establish a procedural schedule in this matter. Persons and entities that have timely filed a Notice of Appearance must attend. Interested persons and those persons considering submitting testimony as a Limited Party are encouraged to attend. Prior to the date of the Scheduling Conference, the Department will provide persons and entities that have timely filed a Notice of Appearance with a proposed procedural schedule for discussion

at the Scheduling Conference. A copy of the Department's proposed procedural schedule will also be posted on its website, <http://www.dnrc.state.mt.us/wrd/home.htm>.

The Department makes reasonable accommodation for any disability that may interfere with an individual's ability to attend this meeting. For consideration of any such accommodation, please contact Kim Overcast at 406-444-6614 (TTD number 406-444-6873) by October 1, 2005.

Only evidence that is not already in the Department of Natural Resources and Conservation's possession need be presented at the hearing. A complete copy of the Department's official file can be requested and purchased from the Department. Contact Kim Overcast at 406-444-6614 to obtain a copy. A copy of the Department file will also be available at the hearing and is available at the DNRC, Kalispell Water Resources Regional Office.

After the hearing, the Hearing Examiner will submit to the Full and Limited Parties, and interested persons, written findings and a proposed decision based upon the oral and written evidence that is a part of the record. Full Parties will have an opportunity to file exceptions to the proposed decision as further specified in the proposed decision. Limited Parties may not file exceptions to the proposed decision. As required by Mont. Code Ann. § 85-2-507, the Department will issue a final order that will designate a controlled ground water area or a temporary controlled ground water area pending further study (with corrective control provisions), or it may deny the petition for a controlled ground water area. The final order will be published and filed and recorded with the county clerk and recorder. It will also be available on the Department's Water Resources Division website, above, and from the Department upon request.

Dated this 3rd day of June 2005.

Charles F Brasen
Hearing Examiner
Department of Natural
Resources and Conservation
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Helena, MT 59620-1601
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